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USER GENERATED CONTENT »
USER GENERATED COPYRIGHT



How to design a fair model for remunerating authors

Göttingen 2015

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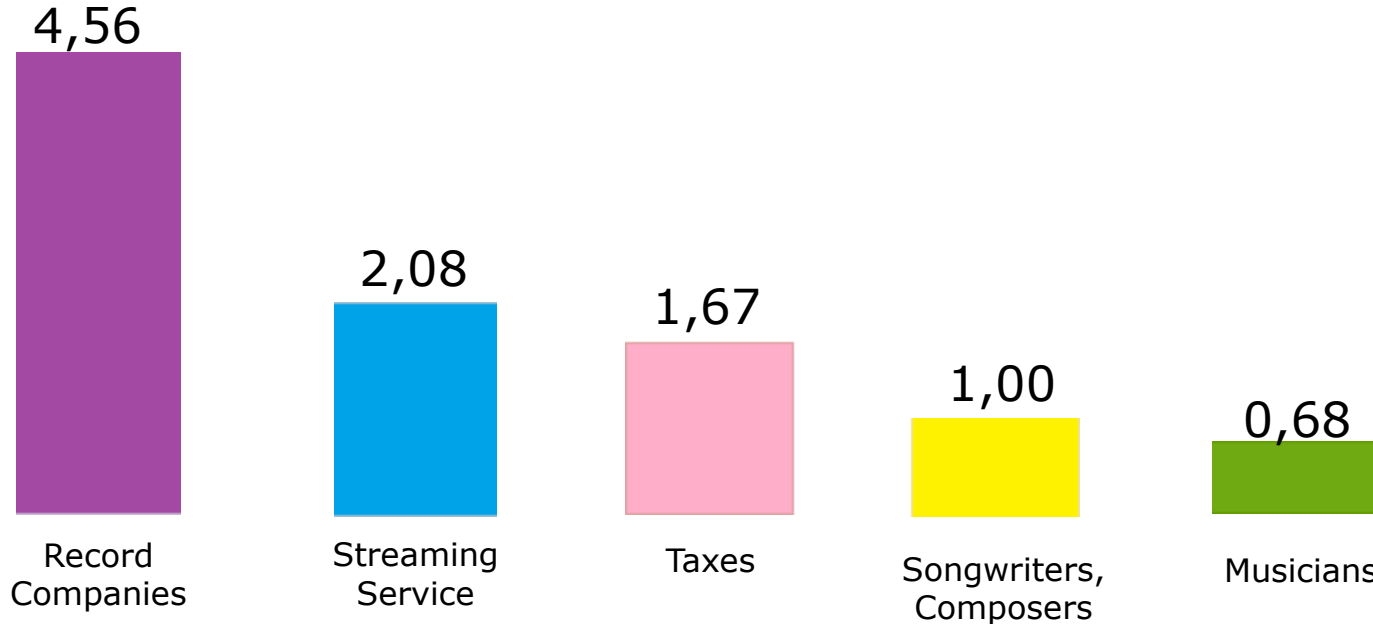
Background of the study



- **Sparkling Science Research Project:** „From ‚User-Generated-Content‘ to ‚User-Generated-Copyright‘“ (funded by the Austrian Ministry of Science, Research and Economy)
- Interdisciplinary Approach / “Citizen Science”
 - Inclusion of young students, aged 14-20 (digital natives), as “young scientists”
- **Goal:** Definition of requirements of a modern, well-balanced copyright system in the light of the “prosumer”-paradigm.

Focus: Remuneration of Authors

- Media coverage:
- Streaming Services



Source: SNEP, EY

- **European Parliament resolution (2014/2256(INI))**
 - *"...having regard to the competitive advantage and growing power of a number of Internet intermediaries and to the negative impact of this situation on **authors**' creative potential"*
 - *"Points out that copyright is the tangible means of ensuring that **creators are remunerated** and that the creative process is funded;"*
 - *"providing **authors** of literary and artistic works with sufficient recognition and protection of their rights;"*
 - *"... stresses that **authors and performers** must receive **fair remuneration** in the digital environment and in the analogue world alike;"*

Stakeholders - Interests

Creative Community

Authors

- Dissemination
- Income

Performing Artists

Intermediaries

Publishers, Producers etc

Other Intermediaries

Collecting Societies

Public

Users

- Access

Prosumers

- Use / Sharing
(UGC)

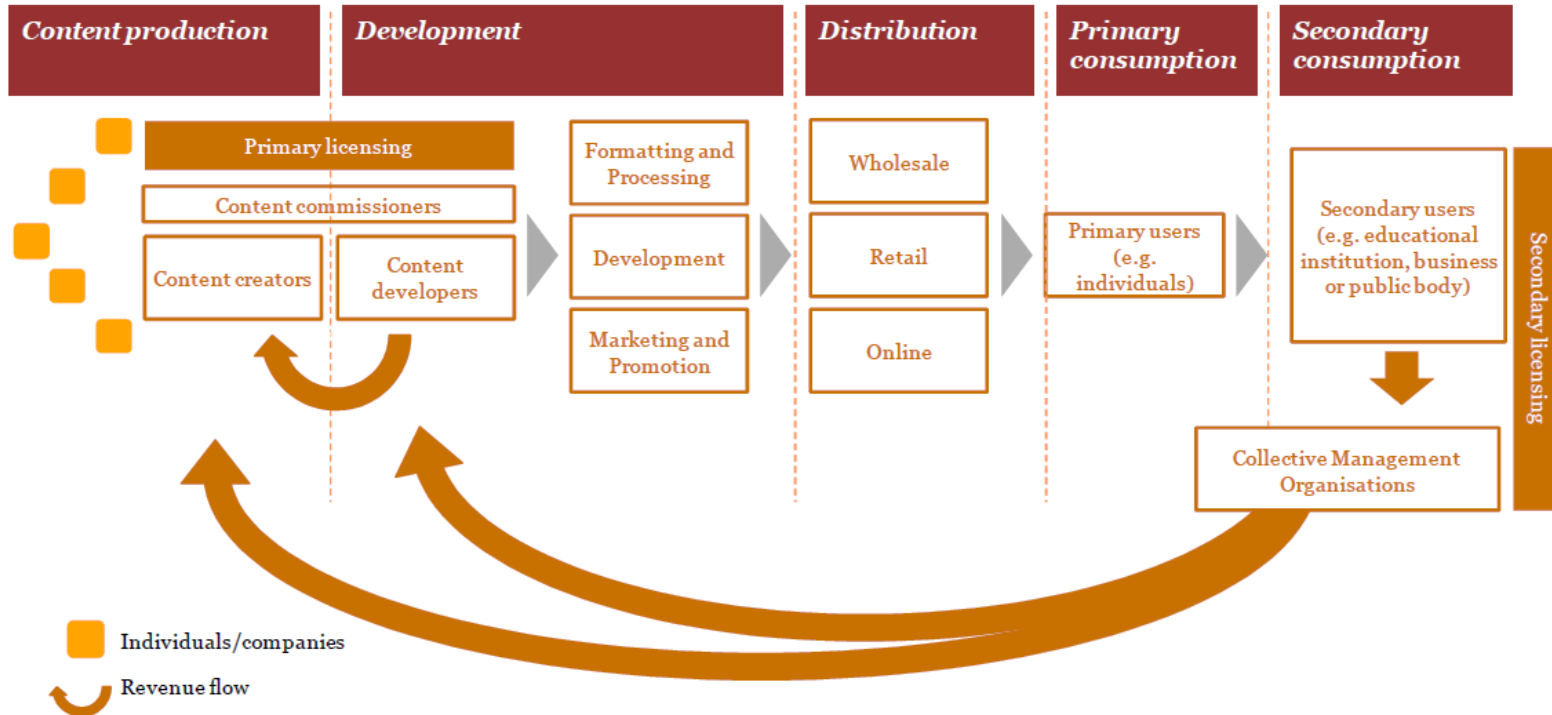
Educational Institutions

- not paying twice for
research results

Copyright & Remuneration for authors

- Exclusive Rights = remuneration
- Limitation of scope of protection
(idea/expression dichotomy, originality, duration) = no remuneration
- Limitations and Exceptions
 - „free uses“ = no remuneration
 - „statutory licenses“ = „fair compensation“
„equ. remuneration“
- Collective management of rights = remuneration
- Compulsory licenses = remuneration

„Cash Flow“ of remuneration



Source: PwC, An economic analysis of copyright, secondary copyright and collective licensing (2011)

- Strengthening financial interests of authors
 - *Jäger*, *ecolex* 2015, 681; *Leistner*, *GRUR-Int.* 2015, 681; *Hilty* in FS Schrickler, 325; *Melichar* in Schrickler/Loewenheim, *Urheberrecht*⁴, Vor §§ 44a ff Rz 15; *Metzger* in Obergfell [Hrsg.] *Zehn Jahre reformiertes Urhebervertragsrecht*, 54

- ALAI Congress 2015

- Austria Copyright Amendment 2015
 - Levies on hard-disks ("Speichermedienvergütung" Sec 42b UrhG)
 - E-Learning (Sec 42g UrhG)

- **Public lending right** (Sec 16a §2 UrhG)
- **Resale right** (Sec 16b §1 UrhG)
- **Reproductions for private or own purposes**
„Private Copying“ (Sec 42b §1 UrhG)
- **Reprographic Reproductions** (Sec 42b §2 UrhG)
- **Uses for impaired persons** (Sec 42d §4 UrhG)
- **E-Learning** (Sec 42g §3 UrhG)
- **Incorporation of literary and art work in educational works** (Sec 45 §3, Sec 51 §2, and Sec 54 §2 UrhG)

- **Use of audio and audiovisual material in libraries** (Sec 56b §1 UrhG)
- **Public performance of cinematographic works in schools and universities** (Sec 56c §2 UrhG)
- **Public performance of cinematographic works in lodging establishments** (Sec 56d §2 UrhG)
- **Orphan works** (Sec 56e §6 UrhG)
- **Broadcasting and communication to the public by commercially produced phonograms** (Sec 76 §3 UrhG)

- **ALAI 2015** *"Current technical challenges make it seem more future-proof than ever to base the law not on rights to prohibit use but on remuneration rights"*
- **General exception for scientific research?**
 - *de la Durantaye*, Allgemeine Bildungs- und Wissenschaftsschranke.
- **UGC?**
 - *Bauer*, User Generated Content.
- **Culture Flatrate?**
 - *Spindler*, Rechtsprobleme und wirtschaftliche Vertretbarkeit einer Kulturflatrate; *Büchele*, Content Flatrate und Urheberrecht.

Questions regarding:

- **Transparency?**
- **Accuracy?**
- **Effectiveness?**

- Sec 38 §1 UrhG:
 - *„The author’s statutory rights to remuneration shall be shared equally by the film producer and the author, provided that they are not unwaivable.”*
- Remuneration rights unwaivable?
- CJEU C-277/10 – *Luksan/van der Let*
- See Sec 63a German Copyright Act

Transparency – EP Resolution (2014/2256(INI))

- “59. Notes that **private copying levies** should be governed in such a way as to **inform citizens** of the actual **amount** of the levy, its **purpose** and **how it is going to be used;**”
- “60. Stresses that **digital levies** should be made **more transparent** and **optimised** to safeguard rightholder and consumer rights and by taking into account Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market;”
- “61. Stresses the importance of bringing more **clarity and transparency** to the copyright regime for copyright users, in particular with regard to user-generated content and **copyright levies**, in order to foster creativity and the further development of online platforms, and to ensure appropriate remuneration of copyright holders;”

Transparency – EP Resolution (2013/2114(INI))

- “F. ...the fact that the management of copyright requires particular emphasis on the **transparency of the flows of remuneration collected**, distributed and paid to rightholders by collecting societies, including for private copying;”
- “P. ...a European framework needs to be laid down in order to afford a **high degree of transparency** for rightholders...”
- “17. ...**consumers must be informed** of the **amount, purpose** and **use** of the **levy** they pay;”
- “21. Urges the Member States to ensure **greater transparency** regarding the **allocation** of proceeds from **private copying levies**;”

- Partial phase-out of remuneration?
- Levies for private copying
 - Streaming
 - Cloud Computing
- CJEU C-463/12 – *Copydan*
- CJEU C-435/12 – *ACI Adam*

- Private copying levies in the cloud
- Fair compensation vs equitable remuneration?
 - Individual licensing vs collective licensing
 - DRM
 - CJEU C-457/11-C-460/11 – *VG Wort*
 - CJEU C-463/12 – *Copydan*
- “Double dipping”?

- Remuneration – intensity of use?
- Allocation of levies between authors and intermediaries
 - CJEU C-572/13 – *Hewlett-Packard Belgium/Reprobel*
- Remuneration for new forms of distribution?

Preliminary Conclusions

- Clear structures („Unbundling“?)
 - Defining rightholders entitled to remuneration
 - CMOs
 - Two-tier system?

- Allocation of revenues
 - Authors – Intermediaries

- Purpose of collective remuneration in digital environment
 - UGC?

Kontaktinformation



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